

WRITTEN STATEMENT

OF

MARK MACCARTHY

ON BEHALF OF

VISA U.S.A. INC.

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES

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Chairman Whitfield, Ranking Member Stupak and the Members of the Subcommittee, my name is Mark MacCarthy. I am the Senior Vice President for Public Policy for Visa U.S.A. Inc. Thank you for the invitation to participate in this hearing. Visa appreciates this opportunity to testify as part of the Committee's investigation into the safety of imported prescription drugs.

The Visa Payment System, of which Visa U.S.A.¹ is a part, is one of the leading consumer payment systems in the world. The Visa Payment System consists of Visa, which performs communication and settlement services for its member financial institutions, and Visa's member financial institutions that issue Visa payment cards or that authorize merchants to accept Visa payment cards in payment for transactions. Accordingly, Visa, and Visa member financial institutions that only issue credit cards, do not have direct relationships with Internet pharmacies or other merchants that accept Visa payment cards. On the other hand, Visa member financial institutions that acquire transactions from merchants do have a direct relationship with the merchants that accept Visa payment cards. Visa rules require these acquiring financial institutions to assume responsibility for certain aspects of their relationships with merchants. A fundamental Visa rule is that acquiring financial institutions submit only legal transactions into the Visa payment system. In particular, acquirers must ensure that Internet merchants do not violate laws governing prescription medications.

Visa plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting personal information and preventing identity theft and other fraud, for the benefit of its member financial institutions and their

¹ Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

hundreds of millions of cardholders. Visa recognizes that payment cards are an important part of electronic commerce.

Visa believes that the Visa Payment System has responded, and continues to respond, effectively to the challenges posed by Internet transactions. In this regard, Visa has a keen interest in curbing illicit pharmaceutical sales, as well as other illegal activity, in which Visa cards are used. Visa rules prohibit the use of the Visa Payment System for illegal transactions. Visa has a long history of working with law enforcement (including the Secret Service, the Federal Bureau of Investigation, the Federal Trade Commission, and state and local law enforcement) where the Visa Payment System may have been used in connection with illegal transactions.

In the specific area of illicit sales of prescription pharmaceuticals over the Internet, Visa has met with representatives of the Drug Enforcement Administration (“DEA”) and the Food and Drug Administration (“FDA”) to discuss approaches to the problem of illicit transactions with Internet pharmacies, and has alerted its member financial institutions to the problem of illicit activities by Internet pharmacies.

In March of 2004, in May of 2005, and again in September of 2005, Visa reminded its member financial institutions of their responsibilities to ensure that only legal transactions enter the Visa Payment System and directed their attention to the lists of controlled substances and problematic drugs maintained at the FDA and DEA websites. Visa also directed its members to the FDA public safety bulletins on the FDA website on buying medicines online and noted that a safe website should be licensed by the state board of pharmacy where the website is operating, have a licensed pharmacist available to answer questions, require a prescription from a U.S. licensed doctor or other

healthcare professional licensed in the U.S. to write prescriptions and provide a way to speak to a person about problems. Visa also advised its members to consider relying on a reputable seal program, such as the Verified Internet Pharmacy Practices Site Program (“VIPPS”) operated by the National Association of Boards of Pharmacy, as a means of identifying reputable Internet pharmacies. When alerted that specific Internet pharmacies may be accepting Visa cards for illicit transactions, Visa has worked with its member financial institutions to investigate these pharmacies and to terminate the acceptance of Visa cards for illicit activity.

Visa has retained the services of an outside firm to search the Internet for websites selling controlled substances and accepting Visa payment cards. Using this firm, Visa has initiated a program of monitoring the Internet on a regular basis to ensure that our payment services are not used for the sale of Schedule II controlled substances. We have hired additional staff in-house to direct this program. This program builds on our global initiative for monitoring the Internet for child pornography, uses the same web crawling and filtering technology, and the same outside search firm to conduct the Internet sweeps. Our vendor looks for websites that display the Visa logo, that sell Schedule II controlled substances or other prescription drugs that the FDA or DEA have indicated are especially dangerous, and that do not require a prescription or an exam. The sweeps are ongoing; they are conducted daily and search hundreds of millions of web pages each month. As a result of this monitoring effort, we have had discussions with some of our member financial institutions regarding their merchants who appear to be involved in selling controlled substances. These member financial institutions have conducted their own

investigations and have terminated or restricted the activity of merchants found to be selling controlled substances.

In May of 2004, Visa updated its consumer website to provide safety messages regarding the dangers of purchasing pharmaceuticals over the Internet, to provide links to the websites of the DEA and the National Association of Boards of Pharmacy and to remind consumers that they should only use their Visa payment cards for legal purposes.

More broadly, Visa requires its U.S. members to periodically examine the websites of merchants that they service and requires all Visa merchant websites to contain the address of the merchant's permanent establishment to help consumers determine the identity and assess the nature of an entity with which he or she seeks to do business over the Internet.

We have also taken steps to make sure that illegal Internet pharmacies cannot enter our system indirectly. In 2004, we learned that some Internet pharmacies have been signed up to accept Visa cards as "sponsored merchants" by aggregators or other payment providers. As result, some of our acquiring financial institutions have been unaware that potentially illegal merchants have been operating in their portfolios. To help ensure that our financial institutions remain compliant with Visa regulations that prohibit illegal transactions, in March 2005, Visa modified its rules to make certain that Internet pharmacies or Internet pharmacy referral sites cannot accept Visa cards as sponsored merchants. Acquirers could still sign Internet pharmacies, but they must have direct relationships with them. This added control will help ensure that acquirers conduct meaningful due diligence reviews before merchants are signed and will help increase the level of risk management scrutiny provided to this category of merchant.

Although Visa aggressively tries to prevent the Visa Payment System from being used to support illegal transactions, Visa believes that, in many cases, the only parties that can accurately and effectively determine the legality of transactions, including Internet transactions, are the parties to the transactions themselves. Legality may depend on a variety of factors, such as the geographic location of the parties to the transaction, possession of a required license, intent, or age, among other factors, that cannot be known to third parties that are merely intermediaries in the transmission of payment information.

Accordingly, telephone companies, payment systems and delivery services typically are not required to know whether transactions that are effected using their facilities or services are legal. Historically, it has been only in those circumstances where the use is so unusual as to suggest illegality in its own right (such as transactions that trigger Suspicious Activity Report or Currency Transaction Report requirements) or where the illegality is so overt and egregious (such as child pornography and Schedule II controlled substances) that Congress and law enforcement have enlisted the aid of the third-party intermediaries to monitor the use of their facilities or services for policing illegal transactions.

Visa appreciates the opportunity to appear before you today. I would be happy to answer any questions that you may have.